

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHARON M. RITTENHOUSE and	:	CIVIL ACTION
THOMAS J. RITTENHOUSE, her husband	:	
	:	
v.	:	
	:	
JAMES J. MINERVA, JR.	:	NO. 98-3501

MEMORANDUM AND ORDER

Fullam, Sr. J. August , 1998

Plaintiff Sharon M. Rittenhouse is a flight attendant employed by U.S. Airways. The defendant James Minerva, Jr. was a passenger on a U.S. Airways flight who allegedly became obstreperous and assaulted plaintiff when she refused to serve him any more alcoholic beverages because he was drunk. As a result of the altercation, the defendant was arrested upon arrival at the Philadelphia airport, on federal charges of interfering with a flight attendant; he later pleaded guilty to those charges.

Ms. Rittenhouse filed this action in the Court of Common Pleas of Philadelphia County, seeking damages for assault and battery and related torts. Her husband, also a plaintiff, seeks damages for loss of consortium. The defendant timely removed the action to this court, and plaintiffs have filed a motion for remand.

Plaintiffs are citizens and residents of the State of

New Jersey. Defendant is a citizen and resident of Pennsylvania. The removal notice is somewhat ambiguous as to the basis for this Court's jurisdiction; it alleges both that the amount in controversy exceeds \$75,000 (but without mentioning diverse citizenship), and also that a federal question is involved in plaintiffs' claims.

In seeking remand, plaintiffs assert that their complaint does not seek damages in excess of \$75,000, merely in excess of \$50,000. I note, however, that the complaint seeks compensatory "in excess of \$50,000," but also seeks punitive damages and attorney's fees. Whatever the amount actually claimed may be, the removal cannot be upheld on the basis of diversity jurisdiction, since the defendant is a citizen of Pennsylvania and therefore, under 28 U.S.C. §1441(b) is precluded from removing the case to this court unless plaintiffs' claim arises under the constitution, treaties or laws of the United States.

The defendant now apparently concedes that the case should be remanded unless, as defendant earnestly contends, there is a federal question involved. Defendant points out, correctly, that the plaintiffs' complaint specifically alleges that the defendant violated the federal statute prohibiting interference with airline personnel. But it is quite clear that none of plaintiffs' claims arise under any federal statute. The

allegation that the defendant violated a federal criminal statute in assaulting the plaintiff does not constitute a claim for damages arising under that statute. Indeed, the record contains no reference to any federal statute which would give rise to a private action for damages.

The case must therefore be remanded to the Court of Common Pleas.

An Order follows.

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ORDER

AND NOW, this        day of August, 1998, IT IS ORDERED:

1. Plaintiffs' Motion to Remand is GRANTED.
2. This case is REMANDED to the Court of Common Pleas of Philadelphia County, where it was originally filed (May, 1998; 002421).

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John P. Fullam, Sr. J.